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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1995

Leslie Knighten, Petitioner

Versus

Todd Electric, Inc, And Commercial Union Insurance Company, Respondents

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ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

Leslie E. Knighten, Pro Se
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QUESTIONS PRESENTED

I.

WHETHER LOUISIANA LAW VIOLATES THE DUE PROCESS CLAUSE OF THE CONSTITUTION OF THE UNITED STATES BY ALLOWING THE EMPLOYER\CARRIER TO TERMINATE WORKERS' COMPENSATION BENEFITS OF THE PETITIONER WITHOUT ANY PRIOR HEARING BEFORE THE OFFICE OF WORKERS' COMPENSATION ADMINISTRATION, AND IN PLACING THE ENTIRE BURDEN OF PROOF UPON THE PETITIONER TO LITIGATE FOR WORKERS' COMPENSATION BENEFITS.

LIST OF ALL PARTIES TO THE PROCEEDINGS

1. Todd Electric, Inc,
2. Commercial Union Insurance Company
3. Leslie E. Knighten

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The September 29, 1995 Ruling of the Supreme Court Of Louisiana whose judgment is herein sought to be reviewed, is reported as case No. 95\C\1606, and is reprinted in Appendix A to this Petition. The Supreme Court of Louisiana did not enter a written opinion, in this case . The Petitioner was informed by the Clerk's office that an application for Rehearing would not be considered pursuant to Supreme Court Rules, therefore an Application for Rehearing was not filed.

The May 25, 1995 and April 25, 1995 decisions of the First Circuit Court Of Appeals, Parish Of East Baton Rouge whose judgment is herein sought to be reviewed, is reported as case No. 94\CA\0861 and is reprinted in Appendix B and C to this Petition

The April 5, 1993 Judgment and February 9, 1993 Order of the Office Of Workers' Compensation Administration District 5, Parish of East Baton Rouge whose rulings is herein sought to be reviewed, is reported as case No. 92\00889 and is reprinted in Appendix D and E to this Petition.

JURISDICTION

Jurisdiction of this Court is invoked under the authority of Title 28 U.S.C.

§1257 and by Part III., Rule 10, (c) of the Rules of the Supreme Court of the United States.

Jurisdiction, is also invoked by and through the Fourteenth Amendment to the Constitution Of The United States.

The Attorneys Generals Office of the State of Louisiana has been served with a Copy of this Petition pursuant to Title 28 Sec. 2403(b) and pursuant to Rule 29(4)(c) of the Rules of the Supreme Court of the United States.

STATUTE INVOLVED

Constitution Of The United States,

Fifth and Fourteenth Amendment to the United States Constitution is set forth in the Appendix to this Petition.

OTHERS

Louisiana Code Of Civil Procedure

Art. 1841 and Art. 2083 of the C.C.C.P. of Louisiana are set forth in the Appendix to this Petition.

Due to no fault of his own and as of this day the Petitioner is without knowledge as to what sections of the Louisiana statutes or regulations that the Respondents relied on in the termination of Petitioners Workers' Compensation Benefit. The State Court denied every attempt the Petitioner made in respect to uncovering the relevant state law. Therefore, the Petitioner was unable to be specific in prosecution of

this appeal in the state courts and before this court.

STATEMENT OF THE CASE

On January 22, 1992 the Petitioner filed a timely Disputed Claim for Compensation (R.4-5) including an Appendix "A" (R.9-14), raising numerous issues, with attached Exhibits against Respondent, Todd Electric, Inc. and Respondent, Commercial Union Insurance Co., three of issues are as follows;

> (1) Was Todd Electric Inc. by and through their agent Commercial Union Insurance company(s) in compliance with legislated law by terminating the Worker's Compensation Benefits of Leslie Knighten without any formal hearing through the Office Of Worker's Compensation.
>
> (2) Was Todd Electric Inc. by and through their agent Commercial Union Insurance company(s) in compliance with judicial law by terminating the Worker's Compensation Benefits of Leslie Knighten without any formal hearing through the Office Of Worker's Compensation.
>
> (3) Was Todd Electric Inc. by and through their agent Commercial Union Insurance Company(s) in compliance of the law by terminating the Worker's Compensation Benefits of Leslie Knighten without notice or reason?

additionally, Petitioner filed, in respect to the same, a timely Claim Data Form (R.15&16) including Appendix "B" (R.17-24) with attached Exhibits;

Process was served on both

Respondents being Respondent, Todd Electric, Inc. and Respondent, Commercial Union Insurance Co.

Respondent, Todd Electric, Inc. filed an Answer to Petitioner complaint, in the form of a general denial, with a filing date of March 1, 1992. Petitioner later discovered that someone from the office of workers's compensation back dated the filing date of this document;

On March 27, 1992 the Petitioner filed a Request For Preliminary Judgment.

Respondent, Commercial Union Insurance Company, filed an Answer to Petitioner complaint, in the form of a general denial, on or about June 12, 1992.

The Petitioner submitted and attempted to propound discovery from both Respondents, in light of the fact there were two defendants served and two answers filed.

In the prosecution of the Petitioner's claim for compensation. The Petitioner filed numerous motions and attempted to propound discovery in an attempt to have a clearer understanding of exactly why and pursuant to what state laws the Petitioner's Workers' Compensation Benefits were terminated.

The State Court refused to allow the Petitioner to propound discovery from Respondent, Commercial Union Insurance Company, in the form of Interrogatories that would have required them to state in length and in detail the legal authority

in which they relied on in the termination of Petitioner's benefits.

In light of the fact that both Respondents had filed general denials, on February 10, 1993 the Petitioner filed a Motion for Summary Judgment against Respondent, Commercial Union Insurance Company. On March 23, 1993 the Petitioner filed a Memorandum In Support of Petitioner's Motion For Summary Judgment, with Exhibits and supporting affidavit.

Additionally on February 10, 1993 Petitioner filed a Motion To Reinstate Workers' Compensation Benefits and For Any and All Back Payments Of Benefits And\Or Similar Motion, On February 23, 1993, Petitioner filed a Memorandum in support of his motion to reinstate. **In this pleading a constitutional question was raised in respect to the termination of Petitioners Benefits without litigating before the Office of Workers' Compensation. before the termination of Petitioner's benefits.**

On March 16, 1993 an Order was signed setting a hearing date of March 29, 1993 in respect to Petitioner's Amended Motion To Set Rulings(s) and\or Order(s) Aside Or Similar Motion, Motion For Summary Judgment and Motion To Reinstate;(R.183)

On March 23, 1993 the Respondents filed a Memorandum In Opposition To Motion For Summary Judgment without Exhibits, without a supporting affidavit and failed to challenge the issue of the Answers being a "general denial";

On March 29,1993 a hearing was

conducted by Judge Norbert Rayford, in the process of this hearing the Petitioner raised several Constitutional issues, including a direct challenge of a Louisiana Statute as being Unconstitutional and in violation of the Constitution of the United States. Judge Norbert Rayford made the following Ruling, in pertinent part, as follows: (R.238&239);

> "THE COURT: IT'S MY RULING
> MR. KNIGHTEN: SIR?
> THE COURT: IT'S MY RULING THAT OUR PROCEDURES ARE FUNDAMENTALLY FAIR AND DO MEET CONSTITUTIONAL CHALLENGE. NOW, YOU CAN TAKE THAT DECISION TO THE FIRST CIRCUIT COURT OF APPEALS OR THE STATE SUPREME COURT OR THE UNITED STATES SUPREME COURT. I THINK THAT THE MORE TIME YOU WASTE ON CHALLENGING THAT, THE LONGER YOU'RE GOING TO BE WITHOUT YOUR BENEFITS."

constitutional challenges were pleaded and raised by the Petitioner, argued by the Respondents, and a Judgment (R.217 and R.218) was entered by the state court of first instance, where the following is found (R.217):

> It is further the ruling of this Court that the claimant's assertion that the Workers' Compensation Administration denies him due process of law under the state and federal constitution is without merit and is rejected."

consequently, federal jurisdiction was invoked. On or about April 26, 1993 Judge Norbert Rayford entered a Judgment in respect to Hearing held on March 29, 1993, and further denied all of the

pending motions of the Petitioner;(the Judgment reflect oral reason were given in open Court (R.218), there wasn't a written opinion.

On May 21, 1993 the Petitioner filed a timely: a Notice Of Appeal (R.220); a Designation Of The Record (R.222), and a Motion To Appeal (R.219) with Order and Return Date;

On May 27, 1993 Administrative Court Judge, Norbert Rayford, signed the appeal Order, that brought on this appeal, but omitted dating the return date (R.219);

The record reflect that the Petitioner filed approximately twenty three (23) different pleading with the Administrative Court. The record also reflect the Administrative Court only granted two of the Petitioners motions, one for time and the other one, being the Motion For Appeal, that brought on this Appeal.

On February 2, 1994 this appeal was lodged with the First Circuit, Court of Appeals, State of Louisiana (R.257);

A review of the appeal record indicated that it was incomplete and incorrect. After several months the Petitioner failed in an attempt to have the appeal transcript consistent with the record and in compliance with Petitioner's Designation Of The Record. However, the Petitioner did prove the Answer filed by Respondent's, Todd Electric, Inc. had been back dated to reflect a timely answer.

Pursuant to the Appellant Procedure of the state of Louisiana. On July 21, 1994 the Petitioner filed a timely Brief before the Court of Appeals First Circuit, state of Louisiana Case No. 94\CA\0861. In the Petitioner's Brief four different constitutional issues were raised as an assignment of alleged errors. The table of cases, statutes, authorities, statement of jurisdiction, assignment of alleged errors and argument, are reprinted in the Appendix to this Petition. Issue II is raised and argued in the Petitioner's Brief filed in the Appellant Court is the same issue before this Court as Issue I.

On April 25, 1995, by way of a motion to dismiss, filed by the Respondents the Court of Appeals dismissed this appeal. However, on September 7, 1994 Petitioner filed several pleading prior to the dismissal, including a Declinatory and a Peremptory Exceptions challenge the subject matter jurisdiction of the state court to dismiss this appeal in light of the fact that federal jurisdiction had been invoked, and was now within the Judicial Power of the Federal Court. Additionally, Petitioner, filed several motions and orders for the Respondents to show cause, in respect to the exceptions and other motions filed by the Petitioner. The petitioner doesn't have any knowledge or record of the state court ruling on these exceptions or motions filed by the Petitioner. They were either denied or not considered by the state court.

A timely Petition for Rehearing was filed by the Petitioner. Again Petitioner

reinstated his constitutional issues, and assigning several other constitutional issue as a consequence of the dismissal of this case. On May 25, 1995 the state court denied Petitioner's Application for Rehearing.

A timely Application for Writ of Certiorari and\or Review was filed with the Supreme Court of Louisiana. Again Petitioner reinstated his constitutional issues, that were raised in the Court of Appeal. On September 29, 1995 the Supreme Court of Louisiana denied

On or about March 30, 1985 the Petitioner received a job related injury while working as an electrician in Baton Rouge, La. for Respondent, Todd Electric, Inc.;

As a consequence of this injury the Petitioner was taken directly from the job sight, by means of an ambulance service, to the Baton Rouge General Hospital for treatment;

The Petitioner's Workers' Compensation Benefits became vested on or about May 5, 1985 when Petitioner started receiving benefits from Respondent Commercial Union Insurance Company in excess of nine hundred dollar a month, from the date injury, based upon an average income of $2,332.84 dollars a month (R.28);

The Petitioner received the aforementioned Benefits until or about June 18, 1987 when said benefits were modified (R.28) by Respondent, Commercial Union Insurance Company, based upon a

medical report (R.28) from Dr. Jack Loupe, Petitioner's treating physician, indicating the Petitioner "should be able to tolerate mild to moderate work". Consequently, said benefits were modified from about one thousand dollars a month to about seven hundred a month;

Petitioner contends and has litigated that he became vested in Workers' Compensation Benefits as the result of a job related injury, that occurred on or about March 30, 1985. Petitioner received Compensation Benefits to on or about February 11, 1991 at which time said benefits were terminated solely by the Respondents, without any prior notice or any hearing before the Office Of Workers' Compensation Administration.

Petitioner further contends and has litigated: that the Workers' Compensation Benefits are property rights by statutory entitlement, therefore the Petitioner's property rights cannot be terminated or modified, without due process;

The Respondents have taken the position and litigated that Workers' Compensation Benefits are not a property right by statutory entitlement and short of a judgment or order in favor of the Petitioner, ordering payment, they are not required to pay anything. Respondents further allege they paid benefits voluntarily until they had sufficient information in their opinion to terminate benefits and within their rights pursuant to the Louisiana Worker's Compensation Act, therefore are not required to litigate before the Office of Workers' Compensation Administration prior to

termination of Petitioner's Workers' Compensation benefits.

REASONS FOR GRANTING THE WRIT

I.

Whether Louisiana Law violates the Due Process Clause of the Constitution of the United States by allowing the Employer\Carrier to terminate Workers' Compensation Benefits of the Petitioner without any prior hearing before the Office of Workers' Compensation Administration, and in placing the entire burden of proof upon the Petitioner to litigate for Workers' Compensation Benefits.

The Petitioner submits that the pertinent part of the law cited in the Opinion of *Kendall, vs. Brock*, 689 F.Supp 354 (1987); *Board of Regents v. Roth*, 408 U.S. 564, 570-71 (1972); and *Mathews v. Eldridge*, 424 U.S. 319 (1976) are just a few authorities applicable to the case at hand.

The record and evidence in the case at hand will support the fact that on March 30, 1985 the Petitioner received a job related injury (Plaintiff's Exhibit #11) while working as an electrician in Baton Rouge, La. for Respondent, Todd Electric, Inc. The Petitioner was taken directly from the job sight, by means of an ambulance service, to the Baton Rouge General Hospital, in Baton Rouge, Louisiana for treatment, where Petitioner remained for approximately six days;

The Petitioner's Workers' Compensation Benefits became vested on or about May 5, 1985 (R.28) when Petitioner started receiving benefits from Respondent, Commercial Union Insurance Company.

The Petitioner received Workers' Compensation Benefits until or about June 18, 1987 when said benefits were modified (R.28) by Respondent, Commercial Union Insurance Company, biased upon a medical report (R.28) from Dr. Jack Loupe, Petitioner's treating physician, indicating the Petitioner "should be able to tolerate mild to moderate work". Consequently, said benefits were modified from about one thousand dollars a month to about seven hundred a month;

On about February 11, 1991 the Petitioner stopped receiving Workers' Compensation Benefits. On or about March 8, 1991, thinking that Petitioner's benefits may have been lost in the mail, sent a letter[1] to Respondent, Commercial Union Insurance and a second inquiry[2] was sent on or about March 14, 1991.

On or about May 1, 1991 Respondent, Commercial Union Insurance, sent a termination letter[3] (R.198) notifying Petitioner that his Workers' Compensation Benefits had been terminated.

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[1] see, Appendix L-1

[2] see, Appendix M-1

[3] see, Appendix N-1

The Petitioner filed a timely claim (R.4) for Workers' Compensation Benefits with attachments, raising several issues for litigation, before the Office of Workers' Compensation in Baton Rouge, Louisiana.

In the prosecution of the Petitioner's claim for compensation. The Petitioner filed numerous motions[4] and attempted to propound discovery in an attempt to the have a clearer understanding of exactly why and pursuant to what state laws the Petitioner's Workers' Compensation Benefits were terminated. Taking into consideration that Respondent, Todd Electric, Inc. and Respondent, Commercial Union Insurance Co., had both filed general denials[5] in respect to their Answers to Petitioner's claim.

A hearing was held on March 29, 1993 to resolve several of Petitioner's motions, all of which were denied, by the Administrative Court, including Petitioner's motion for summary judgment attacking the Answer[6] filed by Respondent, Commercial Union Insurance, Co. as being a general denial. The state court also denied was Petitioner's amended motion to set ruling(s) and\or order(s) aside or

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[4] see Appendix Q-1,2,&3

[5] see Appendix P-1,2,3,4,&5 and please note the filing date of the cover letter in comparison to the filing date of the answer and Appendix R-1&2

[6] see, Appendix R-1,&2

similar motion, in respect to the Order[7] entered on February 9, 1993.

Additionally, a constitutional question (R.212) was raised in Petitioner's Motion (to reinstate workers' compensation benefits and for any and all back payments of benefits and \or similar motion), in respect to the constitutionally of the termination of Workers' Compensation Benefits without first litigating before the Workers' Compensation Administration prior to said termination. In the hearing held on March 29, 1993 the following is found in the record (R.238&239);

> "THE COURT: IT'S MY RULING
> MR. KNIGHTEN: SIR?
> THE COURT: IT'S MY RULING THAT OUR PROCEDURES ARE FUNDAMENTALLY FAIR AND DO MEET CONSTITUTIONAL CHALLENGE. NOW, YOU CAN TAKE THAT DECISION TO THE FIRST CIRCUIT COURT OF APPEALS OR THE STATE SUPREME COURT OR THE UNITED STATES SUPREME COURT. I THINK THAT THE MORE TIME YOU WASTE ON CHALLENGING THAT, THE LONGER YOU'RE GOING TO BE WITHOUT YOUR BENEFITS."

constitutional challenges were pleaded and raised by the Petitioner, argued by the Respondents, and a Judgment[8] (R.217 and R.218) was entered by the Administrative Court, where the following is found (R.217):

> It is further the ruling of this Court

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[7] see, Appendix E-1,&2

[8] see Appendix D-1&2

that the claimant's assertion that the Workers' Compensation Administration denies him due process of law under the state and federal constitution is without merit and is rejected."

consequently, federal jurisdiction was invoked. A timely notice of Appeal[9], designation of the record[10] and a motion and order for appeal[11] was filed in the Office of Workers' Compensation on May 21, 1993 .

On April 28, 1994 the Petitioner was informed of the notice of lodging of appeal record. On July 21, 1994 a timely interlocutory appeal was filed in the First Circuit Court of Appeals styled as case number 94/CA/0861.

Originally, the Petitioner raised four Issues[12] in the appeal before the state court and in support of the Petitioners contentions cited numerous decisions[13] of this Court, which are as follows, ***see***: *Blackmer v. United States*,284 US 421, 52 S.CT 252; *Goldburg vs. Kelly*, 397 US 254, 90 S.CT 1011; *Gross vs. Lopez*, 419 U.S. 565, 95 S.CT 729; *Jacob vs Roberts*, 223 US 261, 32 S

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[9] see, Appendix K-1&2

[10] see, Appendix J-1,2&3

[11] see, Appendix I-1,2&3

[12] see, Appendix X-4,&5

[13] see, Appendix X-1 as found in Petitioner's appeal Brief filed in state court.

CT 303; *Louisville & N.R. Co. vs Western Union Teleg. Co.*, 234 US 369, 34 S CT 810; *Mobile, J. & K.C.R. Co. VS Turnipseed*, 219 US 35,43, 55 Led 78,80, 31 S.Ct 136; *Speiser VS Randall*,357 US. 513, 2 Led 2d 1460,78 S.Ct 1332; *Walker v Hutchinson*, 352 US 112, 77 S CT 200; *Western & A.R. Co. VS Henderson*, 279 US 639, 73 Led 884, 49 S.Ct 445; *Wisconsin vs Constantineau*,400 US 433, 91 S CT 507; and *Withrow vs. Larkin*, 421 US 35, 95 CT 1456. Additionally, Miller vs. Hoyle, 328 So. 2nd 757 (La. App. 1st Cir., 1976) and Kendall, vs. Brock,689 F.Supp 354 (1987) were cited.

The Petitioner briefed and argued in state Court that Workers' Compensation Benefits are in fact and law, a property right by statutory entitlement and the same "due process" requirements governing welfare benefits also govern Workers Compensation Benefits. Therefore Petitioners property rights could not be taken by the Respondents without a hearing and a opportunity to respond, see *Kendall, vs. Brock*, 689 F.Supp 354 (1987); *WISCONSIN VS. CONSTANTINEAU*, 400 US 433, 91 S CT 507, *WITHROW VS. LARKIN*, 421 US 35, 95 CT 1456; and *GOLDBURG VS. KELLY*, 397 US 254, 90 S.CT 1011 cited in Petitioner's Brief[14] filed in state court.

In support of Petitioner's Issue I., that before this Court for consideration was assigned in the State Court as Issue II and one of cases relied on and

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[14] see, Appendix X-8,9,10,11,&12

briefed[15] was *Kendall*.

The Petitioner submits the Opinion[16] found in Kendell was entered on the 27th day of September, 1985 by the Honorable Albert W. Coffrin, Chief Judge, United States District Court in Vermont. The pertinent part of the law cited in the Opinion of *Kendell* is applicable to the case at hand, one such case cited in *Kendell* is *Board of Regents v. Roth*, 408 U.S. 564, 570-71 (1972), in pertinent part as follows:

> "In order to establish a due process violation, the Plaintiff must prove (1) that he has been deprived of a property interest, and (2) that the procedural protections surrounding that deprivation did not comport with due process.

The Petitioner submits he meets the first test of Board of Regents and has been deprived a property interest which constituted a violation of due process, guaranteed the petitioner by the Fifth and\or Fourteenth Amendment(s) of the Constitution Of the United States and further submits the following:

The Respondents have taken the position in their brief filed in state Court that the Petitioners appeal is without merit and disputes Petitioner's contentions that his workers' compensation benefits constitutes a property interest, guaranteed by the Fifth and\or Fourteenth Amendment.

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[15] see, Appendix X-11,12,13&14

[16] see Appendix W-1,2,3,4,5,6,&7

The position taken by the Respondents in the state courts is in conflict with other state and federal case law found in support of the Petitioner's contentions, see; Baksalary v. Smith, 579 F. Supp. 218, 224-25 (E.D. Pa.) (three judge panel), aff'd, 591 F. Supp. 1279 (E.D. Pa. 1984) (same), appeal dismissed sub nom. Allstate Ins. Co. v. Baksalary, 105 S.ct. 890 (1985) (with Justices Brennan and Stevens noting that they would affirm); Auxier v. Woodward State Hosp., 266 N.W. 2d 139, 142 (Iowa.), cert. denied, 439 U.S. 930 (1979); Carr v. SAIF, 65 Or. App. 110, 670 P.2d 1037, 1042 (1983); Mosgo v. W.C.A.B., 480 A.2d 1285, 1288 (Pa. 1984); Mitchell v. State Workers' Comp. Comm'r, 256 S.E.2d 1, 10 (W. Va.1979); cf. Mathews v. Eldridge, 424 U.S. 319, 332 (1976) (social security disability benefits) and *Kendall, vs. Brock*,689 F.Supp 354 (1987).

In Kendall the District Court of Vermont found that a property interest exists and proceed to the question of whether sufficient procedural protections surrounded the taking of that interest.

The Petitioner submits he meets the second test of Board of Regents and has been deprived a property interest and further submits that the procedural protections surrounding that deprivation did not comport with due process, constituting a violation of due process, guaranteed the petitioner by the Fifth and\or Fourteenth Amendment(s) of the Constitution Of the United States and further submits the following

The landmark decision regarding what

procedural protections must surround the taking of a property interest is *Mathews v. Eldridge*, 424 U.S. 319 (1976). There the Court instructed that the following three factors must be balanced in assessing what process is due: (1) plaintiff's interest in the property at issue; (2) the fiscal and administrative burdens on the government which additional or alternative procedures would involve; and (3) the degree to which those added or alternative procedures would reduce the risk of an erroneous deprivation. Id. at 335.

In *Kendell*, the District Court looked no further than the Supreme Court's decision in Loudermill v. Board of Educ., 105 S. Ct. 1487 (1985), to determine that Kendell would prevail on the merits of her due process claim. In Loudermill, plaintiff was immediately discharged from his position as a public employee when his employer, the Cleveland Board of Education, discovered upon a routine examination of plaintiff's employment records that plaintiff had falsely stated on his initial job application that he had never been convicted of a felony. He was afforded no pre-termination right to respond to the charge of dishonesty or otherwise to challenge his dismissal.

In holding that a due process violation had occurred, the Court explicitly rejected the "bitter with the sweet" doctrine which had been set forth in Arnett v. Kennedy, 416 U.S. 134 (1974). The Court broadly stated that for deprivations of property interests, post-termination procedures by themselves are inadequate and that the termination

must be preceded by at least "notice and opportunity to respond." 105 S.Ct. at 1495. The Court was careful to note that its holding did not require a full adversarial evidentiary hearing prior to the termination, id., thus distinguishing the case from *Goldberg v.Kelly*, 397 U.S. 254 (1970). Yet the Court did hold that "an initial check against mistaken decisions -essentially, a determination of whether there are reasonable grounds" for the termination -- was required. 105 S. Ct. at 1495.

In the Court's decision in *GROSS VS. LOPEZ*, 419 U.S. 565, 95 S.CT 729 in respect to a 10 day suspension of students without a prior hearing, the Court found in pertinent parts, as follows:

> "A ten-day suspension of students from school could not be consider de minimis and therefore imposed without a hearing in complete disregard of due process; neither property interest in educational benefits temporarily denied nor liberty interest in reputation was so insubstantial that suspensions might be constitutionally imposed by any procedure school chose no matter how arbitrary." and "Young people, who under the Ohio statutes, are required to attend school, do not shed their constitutional rights at the school house door."

the Petitioner submits, that he did not leave his constitutional rights, guaranteed by and through the Fourteenth Amendment, at home when he became subject to the Workers' Compensation Laws of the

state of Louisiana.

Petitioner admits that due process does not in this case require a full evidentiary hearing of the type set forth in *Goldberg*. *Goldberg* involved termination of AFDC benefits, which are need-based, and therefore involved an interest greater than that involved in the instant case, which is not based upon need. Yet Petitioner asserts, that his interest in continuing benefits is at least as great as is that of a discharged employee who is not disabled as that of *Loudermill* or as great as a 10 day suspension of students without a prior hearings as that of *Gross* or least as great as in that of *Kendall*.

In Loudermill's the Courts broad statement indicating that no property interest could be terminated without at least pretermination notice and an opportunity to respond. In application of Loudermill to the case at hand, the Petitioner submits that the present procedures of the Office of Workers' Compensation of Louisiana violates Petitioners due process rights, guaranteed by and through the Fourteenth Amendment, as asserted in the hearing held on March 29, 1993 and in Petitioner's Briefs filed in the prosecution of this appeal in the state Courts.

This holding is in accord with that of several other decisions involving the termination of state workers' compensation benefits. See Baksalary v. Smith, 579 F. Supp. at 232-33; Auxier v. Woodward State Hospital, 266 N.W.2d at

142-43; Carr v. SAIF, 670 P.2d at 1046; Mosgo v. W.C.A.B., 480 A.2d at 1288; Mitchell v. State Workers Comp. Comm'r, 256 S.E.2d at 10.31

Due process, guaranteed by the Fifth and\or Fourteenth Amendments, demands pre-termination notice and opportunity to respond in some meaningful manner, before a decision to terminate benefits is rendered.

Looking to the pleading and the record found in this case, the Petitioner submits: The Petitioner's property interest that he had been receiving for over four years, being Workers' Compensation benefits, was terminated without any pre-termination notice and opportunity to respond in some meaningful manner, by Respondent, Commercial Union Insurance, Co., their termination letter[17] was sent to the Petitioner approximately three months after the termination of Petitioner's benefits. Constituting a violation of due process, see , *WISCONSIN VS. CONSTANTINEAU*, 400 US 433, 91 S CT 507, *WITHROW VS. LARKIN*, 421 US 35, 95 CT 1456; *GOLDBURG VS. KELLY*, 397 US 254, 90 SECT 1011; GROSS VS. *LOPES*, 419 U.S. 565, 95 SECT 729; *Baksalary v. Smith*, 579 F. Supp. at 232-33; *Auxier v. Woodward State Hospital*, 266 N.W.2d at 142-43; *Carr v. SAIF*, 670 P.2d at 1046; *Mosgo v. W.C.A.B.*, 480 A.2d at 1288; *Mitchell v. State Workers Comp. Comm'r*, 256 S.E.2d at 10.31 and *Kendall, vs. Brock*,689 F.Supp 354 (1987).

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[17] see, Appendix N-1

The petitioner submits that the "burden of proof" to obtain compensation benefits was unconstitutionally shifted to Petitioner to litigate before the Office of Workers' Compensation and file a 1008 form within one year from the date of termination. Constituting a violation of Due Process, see *SPEISER VS RANDALL*, 357 US. 513, 2 Led 2d 1460, 78 S.Ct 1332, in pertinent parts as follows:

> "The United States Supreme Court will strike down state statutes unfairly shifting the burden of proof in civil cases."

Respondent, Todd Electric, Inc. was the first Respondent to file an answer, being a general denial, to Petitioner's claim. Approximately two years later Petitioner discovered that Todd's Answer had been backed by someone from the Office of Workers to reflect a timely answer defeating Petitioner's Preliminary Judgment, requiring payment of benefits until this case is set for trial on the merits.

The Respondents in the case at hand was not required by the state courts to furnish the Petitioner with any information concerning the legal basis for the termination of Petitioner' property interest as reflected in the state Court's Order[18] in denying Petitioner's motion(s) to compel, especially in propounding discovery[19] from

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[18] see Appendix E-1,&2

[19] see Appendix T-1 found in the record at (R.93&94)

Respondent, Commercial Union Insurance, reflecting the reason and what legal authority was the basis of their decision for the termination, in light of the fact that the Respondent, Commercial Union Insurance, Co., had filed an answer[20](R.53).

The Petitioner filed numerous pleading with memorandums in the state court attempted to attack the answers filed by both Respondents as being vague and a beings general denials all of which were denied[21] by the state court. Constituting a violation of Petitioner's constitutional right to a fair and impartial trial, guaranteed by the Fifth and\or Fourteenth Amendments to the Constitution of the United States, see *WITHROW VS. LARKIN*, 421 US 35, 95 CT 1456.

The Petitioner submits that the appellant process remedy of the state court is inadequate to safeguard the due process rights of the Petitioner. The Petitioner, further submits that form the onset, the entire burden of proof in processing this appeal is unconstitutionally placed upon the Petitioner in respect to: (1) the length of time the appeal is docketed in the appellant court, in this case the Notice of appeal[22] and the Motion to Appeal was filed on May 21, 1993, the Order was

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[20] see, Appendix R-1,&2

[21] see Appendix Q-1,2&3

[22] see, Appendix K-1&2

signed on the 27th day of May, 1993[23], however the appeal record wasn't lodged in the appellant court until April 28, 1994, being about one year later; and (2) the appeal record transcribed by the Office of Workers' Compensation wasn't in compliance with Petitioner's Designation of the Record[24]. The record remains incorrect and incomplete in light of the fact the Petitioner filed pleading to correct the record. The Petitioner further submits that the state court submitted incorrect record in order to put an undue burden upon the Petitioner in processing this appeal. However, the Petitioner was able to correct the filing date of the Answer filed by Respondent, Todd Electric, Inc., as being filed untimely.

The Petitioner's Statement of Jurisdiction[25] submitted and filed in the state court reflects this appeal was taken pursuant to art. 2083[26] of the appellant procedure of Louisiana. The ruling[27] of the state court dismissing this appeal, reflects that "The appeal was taken from a non-appealable interlocutory judgment. La. C.C.P. art. 1841." The Petitioner submits that art.

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[23] see Appendix I-1,&2, motion and order

[24] see Appendix J-1,2&3

[25] see, Appendix H

[26] see, Appendix F

[27] see, Appendix C

1841[28] has nothing whatsoever with the Appellant Procedure of the state of Louisiana other than referencing different types of Judgments, being final or interlocutory.

The Petitioner submits that the state court unconstitutionally terminated the due process rights of the Petitioner in the hearing held on March 29, 1993 where the following is found (R.238,239):

> "THE COURT: IT'S MY RULING
> MR. KNIGHTEN: SIR?
> THE COURT: IT'S MY RULING THAT OUR PROCEDURES ARE FUNDAMENTALLY FAIR AND DO MEET CONSTITUTIONAL CHALLENGE. NOW, YOU CAN TAKE THAT DECISION TO THE FIRST CIRCUIT COURT OF APPEALS OR THE STATE SUPREME COURT OR THE UNITED STATES SUPREME COURT. I THINK THAT THE MORE TIME YOU WASTE ON CHALLENGING THAT, THE LONGER YOU'RE GOING TO BE WITHOUT YOUR BENEFITS."

the state court made a ruling on a constitutional issue, as reflect in the Judgment[29] and unconstitutionally terminated the due process rights of the Petitioner in the prosecution of his claim, constituting a final and appealable judgment\order. The Petitioner believes the case authority in respect to this issue is either found or cited in *GOLDBURG VS. KELLY*, 397 US 254, 90 S.CT 1011 and\or *Mathews v. Eldridge*, 424 U.S. 319 (1976).

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[28] see, Appendix G-1

[29] see, Appendix D

The Petitioner submits prior to the dismissal of this case in state court, he filed numerous pleading, memorandums, and motion and orders for the Respondents to show cause, in state appellant court in an attempt to prevent the state court from dismissing this appeal, all of which were either denied or not ruled on. Constituting a violation of due process.

The state Court's ruling that the Petitioner's assertion that the Workers' Compensation Administration denies him due process of law under the state and federal constitution is without merit and is rejected. In application of this ruling of the State Courts to the State Laws of Louisiana has mandated that Petitioner will suffer an irreparable injury in the prosecution of Petitioner's claim, consequently being denied due process.

The Petitioner submits that under the present laws of Louisiana there is no constitutional state remedy to resolve this claim and protect his due process rights guaranteed by the Constitution of the United States and the risk that the Petitioner will suffer irreparable injury is to high to be tolerable under the due process clause to allow the State Courts rulings and relevant State Laws to stand.

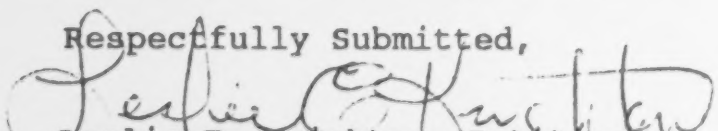
In the prosecution of this case the court of first instance denied almost every motion the Petitioner filed and backed dated the filing date the Answer filed by Respondent, Todd Electric, Inc., to indicate a timely answer. The State Court of last resort, denied to hear this case and on October 26, 1995 the Supreme

Court of Louisiana denied[30] Petitioner' Motion to Stay Proceedings. Consequently, this matter has been set for trial on the merits, on the 21st day of February, 1996 without due process protection guaranteed the Petitioner by the constitution of the United States, he will suffer irreparable injury.

CONCLUSION

For one, or any combination, of the foregoing reasons set forth in this petition, Petitioner respectfully request that his Petition for a Writ of Certiorari should be issue to review the judgment(s) and order(s) of the state courts of Louisiana. Additionally, Petitioner is respectfully requesting a favorable rulings on the Constitutional issue submitted, all back payments and full reinstatement of Workers' Compensation Benefits, implementation of a procedure that requires, a notice of termination, or reduction, including appropriate references to statutes, regulations, and decisional law, prior to a decision in termination of Petitioners Workers' Compensation Benefits, and a hearing to be held at a meaningful time.

Respectfully Submitted,



Leslie E. Knighten, Petitioner
Post Office Box 526
Quitman, Mississippi 39355
(601) 727-3786

[30] see Appendix S-1

Supreme Court, U.S.
FILED

951019 DEC 26 1995

OFFICE OF THE CLERK

NUMBER:

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1995

Leslie Knighten, Petitioner

Versus

Todd Electric, Inc, And Commercial Union Insurance Company, Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Leslie E. Knighten, Pro Se
Post Office Box 526
Quitman, Mississippi 39355
(601) 727-3786

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THE SUPREME COURT OF THE STATE OF LOUISIANA

LESLIE KNIGHTEN

VS. NO. 95-C-1606

TODD ELECTRIC, INC., ET AL

IN RE: Knighten, Leslie; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; Parish of East Baton Rouge Office of Workers Compensation Div. "5" Number 92/00889; to the Court of Appeals, First Circuit, Number CA 94 0861

September 29, 1995

Denied

JLD

JCW

HTL

CDK

BJJ

JPV

MARCUS, J. not on panel.

Supreme Court of Louisiana
September 29, 1995

s\Frans J. Labranche, Jr.
Clerk of Court
For the Court

COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA

RE: Docket Number 94/CA/0861

LESLIE KNIGHTEN

--VERSUS-- Parish of Off. of Workers Comp.

TODD ELECTRIC, INC. AND COMMERCIAL UNION INSURANCE CO.

On application for Rehearing.

Rehearing DENIED

s\Morris A. Lottinger, Jr.
Morris A. Lottinger, Jr., C.J.

s\Melvin A. Shortess
Melvin A. Shortess

s\Burrell J. Carter
Burrell J. Carter

Filed MAY 25 1995

s\Stanley P. Lemoine
Stanley P. Lemoine

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

Leslie Knighten

No. 94 CA 0861

VERSUS

TODD ELECTRIC, INC., ET AL

APRIL 25, 1995

In Re: On motion of Todd Electric, Inc. and Commercial Union Insurance, to dismiss the appeal of Leslie Knighten, Office of Workers' Compensation, District 5, State of Louisiana, Docket NO. 92-00889

MOTION TO DISMISS GRANTED

The appeal was taken from a non-appealable interlocutory judgment. La. C.C.P. art 1841.

We elect not to consider this matter as an application for supervisory writ for the reasons set forth in State v. Cause, 486 So.2d 1206 (La.App. 1st Cir. 1986). However, appellant may file an application for supervisory writ in compliance with Rule 4, Uniform Rules, Court of Appeal, on or before May 25, 1995, without the necessity of obtaining a return date order from the trial court. A copy of this Court's action must be included in the writ application for compliance with Rule 4-3.

MAL MAS BJC

COURT OF APPEALS, FIRST CIRCUIT

s\Jackie Acullin
DEPUTY CLERK OF COURT
FOR THE COURT

OFFICE OF WORKERS' COMPENSATION, DISTRICT: 05
STATE OF LOUISIANA

LESLIE KNIGHTEN NUMBER: 2-00889

VERSUS

93 APR 5 A9:04
OFFICE OF WC

TODD ELECTRIC, INC.

J U D G M E N T

This matter came on for hearing on the claimant's motion to set ruling(s) and/or order(s) aside or similar motion, amended motion to set ruling(s) and/or order(s) aside or similar motion, and motion for summary judgment and/or similar motion, and motion to reinstate workers' compensation benefits, on March 29, 1993 and present were:

LESLIE KNIGHTEN in proper person;

and

Daniel R. Atkinson, Jr. on behalf of TODD ELECTRIC and COMMERCIAL UNION INSURANCE COMPANY.

After considering the record, the motions filed, arguments and supporting memoranda, it is hereby ordered the claimant's motion are denied, with prejudice, at claimant's cost.

It is further the ruling of the Court that the claimant's assertion that the Workers' Compensation Administration denies him due process of law under the state and federal constitution is without merit and is rejected.

Finally, it is the order of this court that the above matter be set for a telephone pretrial (s\status) conference on the s\24th day of s\May, 1993 (s\at 10:30a.m.) to be instituted by

this office.

Oral reasons assigned in Open Court on March 29, 1993.

Judgment read and signed in Chambers the s\26th day of s\April, 1993.

s\Norbert C. Rayford
HEARING OFFICER, OFFICE OF WORKERS' COMPENSATION

BY ATTORNEYS:

MATHEWS, ATKINSON, GUGLIELMO,
MARKS & DAY
Post Office Box 3177
Baton Rouge, Louisiana 70821
Telephone: 504/387-6966

By: s\DANIEL R. ATKINSON, JR.
DANIEL R. ATKINSON, JR. (18103)

OFFICE OF WORKERS' COMPENSATION, DISTRICT: 05
STATE OF LOUISIANA

LESLIE KNIGHTEN NUMBER: 92-00889

VERSUS 93 FEB 9 P1:24
OFFICE OF WC

TODD ELECTRIC, INC.

O R D E R

This matter came on for hearing on the motion to compel, motion for a more definite statement, motion for protective order, and other motion filed on behalf of the claimant, Leslie Knighten, as well as the motion for protective order filed on behalf of COMMERCIAL UNION INSURANCE COMPANY and TODD ELECTRIC, Inc., in Baton Rouge, Louisiana on January 25, 1993.

present were:

Daniel R. Atkinson, Jr. on behalf COMMERCIAL UNION INSURANCE COMPANY and TODD ELECTRIC, Inc.

After considering the record, the motions filed by counsel and supporting memorandums, IT IS HEREBY ORDERED, plaintiff's motions be dismissed, with prejudice, at the cost of claimant.

IT IS FURTHER ORDERED that the plaintiff submit to the taking of his deposition, said deposition to be taken at the offices of Mathews, Atkinson, Guglielmo, Marks & Day at a time convenient to the parties but no case less than sixty (60) days;

IT IS FURTHER ORDERED that the defendants' motion for protective order is hereby granted,

and the defendants will not be required to respond to any further written discovery request over and above the first set of interrogatories, request for production of documents and request for admissions already answered.

Finally, IT IS ORDERED that all cost of these proceedings be paid by claimant.

Oral reasons assigned in Open Court on January 25, 1993. Order read and signed in Chambers this s\10th day of s\February, 1993.

s\Pamela Moses L
HEARING OFFICER, OFFICE OF
WORKERS' COMPENSATION

BY ATTORNEYS:

MATHEWS, ATKINSON, GUGLIELMO,
MARKS & DAY
Post Office Box 3177
Baton Rouge, Louisiana 70821
Telephone: 504/387-6966

By: s\DANIEL R. ATKINSON, JR.
DANIEL R. ATKINSON, JR. (18103)

LOUISIANA CODE OF CIVIL PROCEDURE

BOOK III

PROCEEDINGS IN APPELLANT COURT

TITLE I

APPELLANT PROCEDURE

Art. 2083. Judgments appealable

A. An appeal may be taken from a final judgment rendered in causes in which appeals are given by law whether after hearing or by default, from an interlocutory judgment which may cause irreparable injury, and from a judgment reformed in accordance with a remittitur or additur under Article 1814.

LOUISIANA CODE OF CIVIL PROCEDURE

TITLE VI

JUDGMENTS

CHAPTER 1. GENERAL DEPOSITIONS

ARTICLE

1841. Judgment, interlocutory and final.

1842. Repealed.

1843. Judgment by default.

1844. Judgment of dismissal; effect.

Art. 1841. Judgments, interlocutory and final

A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled. It may be interlocutory or final.

A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment.

A judgment that determines the merits in whole or in part is a final judgment.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under Art. 2083 of the Louisiana Code of Civil Procedure, as an interlocutory appeal, without this appeal Plaintiff-Appellant's case would suffer irreparable injury. Jurisdiction, is also invoked by and through the Fourteenth Amendment To the Constitution Of The United States.

APPENDIX H-1

BEFORE THE
THE LOUISIANA WORKER'S COMPENSATION COMMISSION
LWCC FILE NO. 92-00889

93 MAY 21 P2:02
OFFICE OF WC

LESLIE KNIGHTEN, CLAIMANT

VS.

TODD ELECTRIC, INC. EMPLOYER

AND

COMMERCIAL UNION INSURANCE COMPANY CARRIER

MOTION FOR APPEAL

On Motion of Claimant, Leslie Knighten, in the above styled and numbered cause, and on suggestion to the Administrative Court that the Claimant herein desires to appeal devolutively from the Judgment read and signed in Chambers on the 26th day of April, 1993 and further suggest to the Administrative Court that irreparable injury will occur to Claimant without said appeal.

RESPECTFULLY SUBMITTED:

S\Leslie Knighten
Leslie Knighten
Post Office Box 526
Quitman, Ms. 39355

IT IS ORDERED THAT a devolutively appeal be granted to Claimant, Leslie Knighten, returnable to the Court of Appeal, First Circuit, on the _

____ day of _____, 1993, within the delays fixed by law.

Baton Rouge, Louisiana, this s\27 th day of s\May _____, 1993.

s\Norbert C. Rayford
HEARING OFFICER, OFFICE OF WORKER'S COMPENSATION

CERTIFICATE OF SERVICE

I Claimant, Leslie Knighten, do hereby certify that I have this day forwarded a copy of the above and foregoing to the above named Defendants through their Attorney of record, Daniel R. Atkinson, by placing the same in the United States Mail, postage prepaid and properly addressed to his address of Post Office Box 3177, Baton Rouge, Louisiana 70821-3177.

THIS THE, s\21st _____day of May, 1993.

s\Leslie Knighten
Leslie Knighten

BEFORE THE LOUISIANA WORKER'S COMPENSATION COMMISSION

LWCC FILE NO. 92-00889

93 MAY 21 P2:03
OFFICE OF WC

LESLIE KNIGHTEN CLAIMANT

VS.

TODD ELECTRIC, INC. EMPLOYER

AND

COMMERCIAL UNION INSURANCE COMPANY CARRIER

DESIGNATION OF THE RECORD

I, Leslie Knighten, Claimant in the above styled and numbered cause, designated the following parts of the record as being necessary to be included on appeal:

> The entire record case number: 92-00889, including but not limited to, all testimony, evidence filed taken or offered, exhibits filed taken or offered, pleading, motions, arguments, any and all correspondence contained in the record, any and all Opinion(s) of the Court and any and all Orders and\or Judgment(s) of the Court.

RESPECTFULLY SUBMITTED:

s\Leslie Knighten
Leslie Knighten
Post Office Box 526

Quitman, Ms. 39355
(601) 776-6694

CERTIFICATE OF SERVICE

I, Leslie Knighten, Claimant do hereby certify that I have this day forwarded the foregoing Designation Of The Record to the following individuals by placing the same in the United States Mail, postage prepaid and properly addressed to their usual business addresses designed below:

Ms. Gail Broussard,
Official Court Reporter
Acctech Reporters
8922 Jefferson Hwy.
Baton Rouge, La. 70809

Mr. Daniel R. Atkinson, Jr.
Attorney At Law
Post Office Box 3177
Baton Rouge, La. 70821-3177

THIS THE, s\21ST day of May, 1993.

S\Leslie Knighten
Leslie Knighten

BEFORE THE LOUISIANA WORKER'S COMPENSATION COMMISSION
LWCC FILE NO. 92-00889

93 MAY 21 P2:02
OFFICE OF WC

LESLIE KNIGHTEN — CLAIMANT

VS.

TODD ELECTRIC, INC. — EMPLOYER

AND

COMMERCIAL UNION INSURANCE COMPANY — CARRIER

NOTICE OF APPEAL

I, Leslie Knighten, Claimant in the above styled and numbered cause, by this Notice Of Appeal, appeals to the First Circuit Court Of Appeals from the Judgment read and signed in Chambers on the 26th day of April, 1993.

RESPECTFULLY SUBMITTED:

s\Leslie Knighten
Leslie Knighten
403 East Franklin
Quitman, Ms. 39355
(601) 776-3029

CERTIFICATE OF SERVICE

I, Leslie Knighten, Claimant do hereby certify that I have this day forwarded the foregoing Notice Of Appeal to the following individuals by placing the same in the United States Mail, postage prepaid and properly addressed to their usual business addresses designed below:

Ms. Gail Broussard
Official Court Reporter
Acctech Reporters
8922 Jefferson Hwy.
Baton Rouge, La. 70809

Mr. Daniel R. Atkinson, Jr.
Attorney At Law
Post Office Box 3177
Baton Rouge, La. 70821-3177

THIS THE, s\21st day of May, 1993.

s\Leslie Knighten
Leslie Knighten

March 8, 1991

CERTIFIED MAIL RRR #P 442 316 631

Mr. Lenny Spencer, Claims Representative
Commercial Union Insurance Company
504 Blondin Avenue
P.O. Drawer 1300
Ruston, Louisiana 71273-1300

Re: Claim Number, RK-88

Dear Mr. Spencer:

By this letter I would like to bring to your attention, that as of this date I have not received my workmans compensation check for the week ending February 25, 1991. At your earliest opportunity, please forward me another check.

In the future would you please mail my checks to 403 East Franklin Street, Quitman, Ms. 39355.

Your attention in this matter will be greatly appreciated.

Sincerely,

s\Leslie Knighten
Leslie Knighten

APPENDIX L-1

March 14, 1991

CERTIFIED MAIL RRR #P 442 316 632

Mr. Lenny Spencer, Claims Representative
Commercial Union Insurance Company
504 Blondin Avenue
P.O. Drawer 1300
Ruston, Louisiana 71273-1300

Re: Claim Number, RK-88

Dear Mr. Spencer:

By this letter I would like to bring to your attention, that as of this date I have not received my workmans compensation checks for the weeks ending February 25, 1991 and March 11, 1991. Please forward these checks to me at your earliest opportunity.

Thanking you in advance for your cooperation in this matter.

Sincerely,

s\Leslie Knighten
Leslie Knighten

APPENDIX M-1

CU Insurance

Commercial Union Insurance Companies
520 S. Service Road East
P.O. Drawer 1300
Ruston, Louisiana 71273-1300

May 1, 1991

Leslie Knighten
403 East Franklin
Quitman, MS 39355

RE: CLAIM NO: RK-88

Dear Mr. Knighten:

Pursuant to your recent correspondence to us concerning your workers compensation benefits.

Please be advised we have terminated your workers compensation benefits at this time.

We understand you were able to return to work as a carpenter; therefore we have terminated benefits.

Trust you understand our position in this matter.

Sincerely,

s\Lanny K. Spence
Lanny K. Spence
Claims Representative

LKS:rc

cc(s): Attorney John W. Perry, Jr.
Attorney Craig S. Watson

June 3, 1991

CERTIFIED MAIL RRR #P 442 316 652

Mr. Lanny Spence, Claims Representative
Commercial Union Insurance Company
520 S. Service Road East
P.O. Drawer 1300
Ruston, Louisiana 71273-1300

Re: Claim Number, RK-88

Dear Mr. Spence:

I am in receipt of your letter dated May 1, 1991.

I would like to bring to your attention that in your letter dated May I, 1991. You stated you understood that I could return to work as a carpenter, as a result of this, my workers compensation benefits were terminated.

Since 1962 and until my job related injury in 1985 my trade was as an electrician, which can be supported by your records.

Taking into consideration that I have never earned a dime as a carpenter. Is it your position that I can return to work as a carpenter or is this by error? Please advise.

Sincerely,

Leslie Knighten

APPENDIX O-1

Mathews, Atkinson, Guglielmo, Marks & Day
Attorneys At Law
320 Somerulos Street
Baton Rouge , Louisiana 70802-6129
Telephone (504)387-6966 (504)387-8338 Direct Dial No.

92 APR 1 A10:58
OFFICE OF WC

Daniel R. Atkinson, Sr.
Carey J. Guglielmo
Paul Marks, Jr.
Judith R. Atkinson
Ben Louis Day
Thomas E.Balhoff
Richard Gale Creed, Jr.
Charles A. Schutte, Jr. (APLC)
John W. Perry, Jr.
Henry G. Terhoeve*
Glen Scott Love (APLC)
Daniel R. Atkinson, Jr.
Leonard Cardenas III*
Geraldine E. Fontenot
Daniel J. Leavoy*
Dawn T. Trabeau-Mire*
Joseph W. Mengis

G.T. Owens, Jr. (1905-1972)
E. Leland Richardson (1904-1977)
Robert C. Taylor (1910-1983)
George Mathews (1914-1987)

Mailing Address:
P.O. Box 3177
Baton Rouge, La. 70821-3177

*ALSO ADMITTED IN TEXAS

April 1, 1992

The Honorable Norbert Rayford
Office of Workers' Compensation
5500 Florida Blvd., Suite 106
Baton Rouge, LA 70806

Re: Leslie Knighten
Suit No.: 92-00889
District: 05
Our File: 34-126

Dear Judge Rayford:

In regard to the above captioned matter, please find enclose the original and one (1) copy of the Answer to be filed on behalf of Todd Electric, Inc. and it is my understanding that there are no filing

costs associated with this request. Please file the original pleading and return the additional copy stamped with the date of filing (i.e. in our self-addressed and stamped envelop which is enclosed for your convenience).
In accordance with provisions of R.S. 23:1310.3, please send notice to the undersigned of the setting of the prehearing conference.

With kindest regards, we remain

Yours sincerely,

s\Daniel R. Atkinson, Jr.
Daniel R. Atkinson, Jr.

DRAjr/adt

Enclosure

cc: Mr. Leslie Knighten
Mr. Lanny Spence

LESLIE KNIGHTEN

VERSUS

TODD ELECTRIC, INC.

NUMBER: 92-00889
DISTRICT :05
OFFICE OF WORKERS' COMP.
STATE OF LOUISIANA

92 MAR 1 A10:55
OFFICE OF WC

ANSWER

Now into this administrative Hearing, comes Todd Electric, Inc. and for response to that disputed claim for compensation filed by LESLIE KNIGHTEN, and in accordance with the amended provisions of the Louisiana Workers' Compensation Act. states:

1.

The employer named herein, TODD ELECTRIC, INC., shows that there is a dispute both as to the alleged work-related injury and any benefits that might be allowed under the provision of this Act.

2.

In accordance with the provisions of R.S. 23:1310.3, TODD ELECTRIC, INC., request that a prehearing conference be scheduled within thirty (30) days of the initiation of this claim to mediate and perhaps discuss settlement of the issues in dispute.

3.

With reference to any notices that may be issue in this particular matter, it is requested that those notices be forwarded to Daniel R. Atkinson, Jr., attorney, representing TODD ELECTRIC, INC. insofar as any claims that have been made herein. The complete address of notices

relating to this matter should be as follows:

Daniel R. Atkinson, Jr., Esp.
P. O. Box 3177
Baton Rouge, LA 70821

4.

Further, in accordance with R.S. 23:1319, TODD ELECTRIC, INC. shows that it will be necessary to perform discovery herein and therefore request it be granted authority to schedule deposition or relevant witnesses before any final hearing would be scheduled in this matter.

WHEREFORE, TODD ELECTRIC, INC. prays that this answer be deemed good and sufficient and that after a hearing on this matter that there be judgment in favor of TODD ELECTRIC, INC., dismissing the claim of the employee, LESLIE KNIGHTEN.

BY ATTORNEYS:

MATHEWS, ATKINSON, GUGLIELMO,
MARKS & DAY
Post Office Box 3177
Baton Rouge, Louisiana 70821
Telephone: 504/387-6966

By: s\DANIEL R. ATKINSON, JR.
DANIEL R. ATKINSON, JR. (18103)

CERTIFICATE

I hereby certify that a copy of the above and forgoing document has this day been mailed, postage prepaid to Leslie Knighten, 403 E. Franklin, Quitman, MS 39355.

Baton Rouge, Louisiana, this s\1st day of s\April, 1992.

s\DANIEL R. ATKINSON, JR.
DANIEL R. ATKINSON, JR. (18103)

PETITIONER'S PLEADING FILE
IN THE
OFFICE OF WORKERS' COMPENSATION, DIST. #5

FILED: DISPUTED CLAIM FOR COMPENSATION (LDOL-WC-1008) AND ATTACHMENTS, filed 01/22/92 page 4

DENIED: CLAIMANT'S REQUEST FOR PRELIMINARY JUDGMENT, 03/27/92 page 39,

DENIED: MOTION TO STRIKE SUBMITTED BY CLAIMANT, filed 04/20/92, page 41

FILED: MOTION FOR RECONSIDERATION OF ISSUES,ALTERNATIVELY A MOTION FOR A NEW INFORMAL HEARING AND/OR SIMILAR MOTION FILED BY CLAIMANT, filed 05/29/92 page 44

DENIED: MOTION TO COMPEL SUBMITTED BY CLAIMANT 06/11/92 50

DENIED: MOTION TO STRIKE FILED BY CLAIMANT, filed 06/25/92, page 55

Filed: CLAIMANT'S PRE-TRIAL QUESTIONNAIRE, filed 07/29/92, page 61

GRANTED: MOTION FOR ADDITIONAL TIME TO PROPOUND DISCOVERY FILED BY CLAIMANT filed, 08/14/92 page 79

DENIED: MOTION TO COMPEL CARRIER TO ANSWER CLAIMANT'S FIRST SET OF INTERROGATORIES WITH ATTACHMENTS, filed 09/28/92, page 92

DENIED: MOTION TO COMPEL EMPLOYER TO ANSWER CLAIMANT'S SECOND SET OF

PETITIONER'S PLEADINGS FILED CONTINUED

INTERROGATORIES WITH ATTACHMENTS, filed 09/28/92, page 103

FILED: PLAINTIFF'S FIRST REQUEST FOR ADMISSION TO CARRIER, COMMERCIAL UNION INS. & TODD ELECTRIC, filed 11/09/92, 126

DENIED: MOTION FOR A PROTECTIVE ORDER TO CARRIER,COMMERCIAL UNION INS. CO. & TODD ELECTRIC, filed 12/04/92, page 133

DENIED: MOTION FOR A MORE DEFINITE STATEMENT AND\OR SIMILAR MOTION TO CARRIER COMMERCIAL UNION AND TODD ELECTRIC, filed 12/21/92, page 148

DENIED: MOTION TO ENLARGE NUMBER OF INTERROGATORIES TO EMPLOYER, TODD ELECTRIC OR SIMILAR MOTION 01/21/93 155

DENIED: MOTION TO ENLARGE NUMBER OF INTERROGATIRES TO EMPLOYER COMMERCIAL UNION INS. CO.OR SIMILAR MOTION 01/21/93 160

DENIED: MOTION TO SET RULING AND\OR SIMILAR ORDER ASIDE OR SIMILAR MOTION, filed 02/03/93, page 15

DENIED: MOTION TO COMPEL EMPLOYER TO ANSWER CLAIMANTIS SECOND SET OF INTERROGATORIES WITH ATTACHMENTS, filed 09/28/92, page 103

DENIED: MOTION FOR SUMMARY JUDGEMT AGAINST CARRIER, COMMERCIAL UNION INSURANCE AND\OR SIMULAR MOTION, filed 02/10/93, page 171

PETITIONER'S PLEADINGS FILED CONTINUED

DENEID: MOTION TO REINSTATE WORKER'S COMPENSATION BENEFITS AND FOR ANY AND ALL BACK PAYMENTS OF BENEFITS AND\OR SIMILAR MOTION, filed 02/10/93, page 178

DENIED: MOTION TO SET RULING AND\OR SIMILAR ORDER ASIDE OR SIMILAR MOTION, filed 02/03/93, page 165

GRANTED: MOTION TO APPEAL

RESPONDENT'S PLEADINGS FILED

GRANTED: JUDGMENT ON EXCEPTION FILED BY OFFICE OF WORKERS COMPENSATION, filed 02/28/92 page 36

FILED: ANSWER FILED DEFENDANT TODD ELECTRIC, filed 04/01/92, page 37

FILED: ANSWER SUBMITTED ON BEHALF OF DEFENDANT COMMERCIAL UNION INSURANCE COMPANY, filed 06/12/92, page 53

FILED: RESPONSE TO PRE-TRIAL QUESTIONNAIRE FILED ON BEHALF OF DEFENDANTS, filed 07/01/92, page 58

GRANTED: MOTION FOR PROTECTIVE ORDER TO PLAINTIFF, filed 12/09/92, page 138

GRANTED: ORDER IN OPPOSITION OF PETITIONER'S MOTION TO COMPEL, MOTION FOR A DEFINITE STATEMENT, MOTION FOR PROTECTIVE ORDER AND OTHER MOTIONS FILED, 02/09/93 page 169, (encluding motion to reinstate comp. benfits and motion for summary judgments.)

LESLIE KNIGHTEN

VERSUS

TODD ELECTRIC, INC.

NUMBER: 92-00889
DISTRICT :05
OFFICE OF WORKERS' COMP.
STATE OF LOUISIANA

92 JUN 22 P1:22
OFFICE OF WC

ANSWER

Now into this administrative Hearing, comes COMMERCIAL UNION INSURANCE COMPANY and for response to that disputed claim for compensation filed by LESLIE KNIGHTEN, and in accordance with the amended provisions of the Louisiana Workers' Compensation Act. states:

1.

The insurer named herein, COMMERCIAL UNION INSURANCE COMPANY shows that there is a dispute both as to the alleged work-related injury and any benefits that might be allowed under the provision of this Act.

2.

In accordance with the provisions of R.S. 23:1310.3, COMMERCIAL UNION INSURANCE COMPANY, request that a prehearing conference be scheduled within thirty (30) days of the initiation of this claim to mediate and perhaps discuss settlement of the issues in dispute.

3.

With reference to any notices that may be issue in this particular matter, it is requested that those notices be forwarded to Daniel R. Atkinson, Jr., attorney, representing COMMERCIAL UNION INSURANCE COMPANY insofar as any claims that have been made herein. The complete address of notices relating to this matter should be as follows:

Daniel R. Atkinson, Jr., Esp.
P. O. Box 3177
Baton Rouge, LA 70821

Further, in accordance with R.S. 23:1319, COMMERCIAL UNION INSURANCE COMPANY shows that it will be necessary to perform discovery herein and therefore request it be granted authority to schedule deposition or relevant witnesses before any final hearing would be scheduled in this matter.

WHEREFORE, COMMERCIAL UNION INSURANCE COMPANY prays that this answer be deemed good and sufficient and that after a hearing on this matter that there be judgment in favor of COMMERCIAL UNION INSURANCE COMPANY, dismissing the claim of the employee, LESLIE KNIGHTEN.

BY ATTORNEYS:

MATHEWS, ATKINSON, GUGLIELMO,
MARKS & DAY
Post Office Box 3177
Baton Rouge, Louisiana 70821
Telephone: 504/387-6966

By: s\DANIEL R. ATKINSON, JR.
DANIEL R. ATKINSON, JR. (18103)

CERTIFICATE

I hereby certify that a copy of the above and forgoing document has this day been mailed, postage prepaid to Leslie Knighten, 403 E. Franklin, Quitman, MS 39355.

Baton Rouge, Louisiana, this s\11th day of s\June, 1992.

s\DANIEL R. ATKINSON, JR.
DANIEL R. ATKINSON, JR. (18103)

APPENDIX R-2

SUPREME COURT
STATE OF LOUISIANA
NEW ORLEANS

October 26, 1995

Leslie Knighten, Pro Se
P.O. Box 526
Attorney at Law
Quitman, MS 39355

In Re: Knighten, Leslie
vs. Todd Electric, Inc. et al
No: 95-C-1606

Dear Counsel:

This is to advise that the Court took the following action on the Motion to Stay Proceedings filed in the above entitled matter:

"Stay order denied"

With kindest regards, I remain,

Very truly yours,

s\Frans J. Labranche, Jr.
Frans J. Labranche, Jr.
Clerk of Court

FJLJr/rtd
ccs: Daniel R. Atkinson Esq.

Court of Appeal, First Circuit,
Number CA94 0861, Office of Workers
Compensation Div. "5" Number 92/00889

INTERROGATORY NO. 8: State if the above named Carrier terminated the Workers Compensation Benefits of the above named Claimant without first litigating before the Office Of Worker's Compensation Administration prior to any termination of Workers Compensation Benefits of the above named Claimant.

INTERROGATORY NO. 9: If the answer to interrogatories number 8 is in the affirmative, then state:

a. Identify the person that made this determination;

b. Describe at length and in detail why you terminated the Workers Compensation Benefits of the above named Claimant without first litigating before the Office Of Worker's Compensation Administration prior to any termination of Workers Compensation Benefits of the above named Claimant.

c. Describe at length and in detail the legal basis and legal authority in which you relied on in the your determination for the aforementioned termination of the Worker's Compensation Benefits of the above named Claimant by the above named Carrier and attach a photocopy of any and all documents, any and all statutes and any and all case law that supports you legal position;

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

OPINION

Opinion of the Honorable Albert W. Coffrin, Chief Judge, United States District Court, entered at Burlington in the District of Vermont, on the 27th day of September, 1985, taken from page 9 to page 14, in pertinent part, that:

B. Probability of Success on the Merits.

In order to establish a due process violation, plaintiff must prove (1) that she has been deprived of a property interest, and (2) that the procedural protections surrounding that deprivation did not comport with due process. Board of Regents v. Roth, 408 U.S. 564, 570-71 (1972). The parties do not dispute that plaintiff's interest in the continued receipt of her workers' compensation benefits constitutes a property interest. This is in accord with the case law in this area. See Baksalary v. Smith, 579 F. Supp. 218, 224-25 (E.D. Pa.) (three judge panel), aff'd, 591 F. Supp. 1279 (E.D. Pa. 1984) (same), appeal dismissed sub nom. Allstate Ins. Co. v. Baksalary, _____ U.S. _____, 105 S.ct. 890 (1985) (with Justices Brennan and Stevens noting that they would affirm); Auxier v. Woodward State Hosp., 266 N.W. 2d 139, 142 (Iowa.), cert. denied, 439 U.S. 930 (1979); Carr v. SAIF, 65 Or. App. 110, 670 P.2d 1037, 1042 (1983); Mosgo v. W.C.A.B., 480 A.2d 1285, 1288 (Pa. 1984); Mitchell v. State Workers' Comp. Comm'r, 256 S.E.2d 1, 10 (W. Va.1979); cf. Mathews

v. Eldridge, 424 U.S. 319, 332 (1976) (social security disability benefits). Accordingly, we hold that a property interest exists and proceed to the question of whether sufficient procedural protections surrounded the taking of that interest.

The Secretary's Memorandum in Opposition sets out in detail the procedural protections available in this case. It states that plaintiff twice, in February 1984 and 1985, received formal written notice that her claim for benefits was under periodic review and that she must submit medical evidence in support of her claim. Defendant's Exhibits 8 and 9. It also asserts that plaintiff had continuing access to her file and would have received copies of medical reports contained therein had she so requested. Memorandum at 3-4, 7, citing 20 C.F.R. 10.11. The Secretary contends further that, although plaintiff was deemed to have been ineligible for benefits as of December 4, 1981, the termination did not take effect until June 10, 1985, the day plaintiff received notice that her benefits were to be terminated. Id. at 8. If a claimant disputes a termination he may request a post-termination hearing in which he is entitled to present relevant evidence in support of is claim. 5 U.S.C. Sec. 8124(b); 20 C.F.R. Sec. 10.131-.134. The Secretary must issue its final decision within thirty days of the hearing, 5 U.S.C. Sec. 8124(b), which decision is reviewable by either upon motion of either party. Id. at 8128(a);

20 C.F.R. Sec. 10-136. Final decisions by the OWCP are further subject to review by the ECAB. 20 C.F.R. Sec. 10-137. Finally, claimants are entitled to representation at all stages of the claims procedure, 5 U.S.C. Sec. 8127, and are entitled to have their own physician at all medical examinations requested by the Secretary. 20 C.F.R. Sec. 10.407.

In fact, the Secretary misreads the regulations regarding plaintiff's right to review her file. As we noted earlier, 20 C.F.R. Sec. 10.11(b) provides only that the Secretary may, in his discretion, allow plaintiff access to that file. More importantly, however, there was nothing prior to June 10, 1985 -- the day the benefits were terminated -- to indicate that such a decision was being seriously contemplated. The fact that plaintiff was asked to submit to medical examinations in February of 1984 and 1985 provided no warning since such examinations, authorized by 20 C.F.R. Sec. 10.407, are not extraordinary. Thus, even if plaintiff's file had been fully available to her at all times, there was no reason for her to request access prior to the time she received notice of her termination since there was no indication that the continued receipt of her benefits was in jeopardy.

The landmark decision regarding what procedural protections must surround the taking of a property interest is Mathews v. Eldridge, 424 U.S. 319 (1976). There the Court instructed that the following three

factors must be balanced in assessing what process is due: (1) plaintiff's interest in the property at issue; (2) the fiscal and administrative burdens on the government which additional or alternative procedures would involve; and (3) the degree to which those added or alternative procedures would reduce the risk of an erroneous deprivation. Id. at 335.

In the instant case, we need look no further than the Court's recent decision in Loudermill v. Board of Educ., ____ U.S. ____, 105 S. Ct. 1487 (1985), to determine that plaintiff would prevail on the merits of her due process claim. In Loudermill, plaintiff was immediately discharged from his position as a public employee when his employer, the Cleveland Board of Education, discovered upon a routine examination of plaintiff's employment records that plaintiff had falsely stated on his initial job application that he had never been convicted of a felony. He was afforded no pre-termination right to respond to the charge of dishonesty or otherwise to challenge his dismissal.

In holding that a due process violation had occurred, the Court explicitly rejected the "bitter with the sweet" doctrine which had been set forth in Arnett v. Kennedy, 416 U.S. 134 (1974). The Court broadly stated that for deprivations of property interests, post-termination procedures by themselves are inadequate and that the termination must be preceded by at least "notice and opportunity to respond." 105 S.Ct. at

1495. The Court was careful to note that its holding did not require a full adversarial evidentiary hearing prior to the termination, id., thus distinguishing the case from Goldberg v.Kelly, 397 U.S. 254 (1970). Yet the Court did hold that "an initial check against mistaken decisions -essentially, a determination of whether there are reasonable grounds" for the termination -- was required. 105 S. Ct. at 1495.

Plaintiff admits that due process does not in this case require a full evidentiary hearing of the type set forth in Goldberg. Goldberg involved termination of AFDC benefits, which are need-based, and therefore involved an interest greater than that involved in the instant case. Yet plaintiff asserts, and we agree, that her interest in continuing benefits is at least as great as is that of a discharged employee who is not disabled. Thus, even without Loudermill's broad statement indicating that no property interest could be terminated without at least pretermination notice and an opportunity to respond, we would find that the present procedures violated plaintiff's due process rights.

This holding is in accord with that of several other decisions involving the termination of state workers' compensation benefits. See Baksalary v. Smith, 579 F. Supp. at 232-33; Auxier v. Woodward State Hospital, 266 N.W.2d at 142-43; Carr v. SAIF, 670 P.2d at 1046; Mosgo v. W.C.A.B., 480 A.2d at 1288; Mitchell v. State

Workers Comp. Comm'r, 256 S.E.2d at 10.31[1]

We are not asked, nor do we deem it appropriate at this point, to go further than declaring that plaintiff has a probability of success on the merits of the due process issue. Due process demands pre-termination notice and opportunity to respond in some meaningful manner before a decision to terminate benefits is rendered. We decline at this point to set forth, as has been done by many of the state workers' compensation claims cited above, any more specifically what procedural protections must be given.

C. Jurisdiction.

The Secretary contends that judicial review is precluded under 5 U.S.C. Sec. 8128(b), which provides, in pertinent part, that:

> The action of the Secretary or his designee in allowing or denying a payment under this subchapter is
>
> (1)final and conclusive for all purposes and with respect to all questions of law and fact; and

---

[1] "3/ although these decisions involved benefits received under state programs and not federal, the due process concerns and the balance to be struck as to what procedural protection are required are no different between the state and federal contexts--whether the federal statute precludes judicial review of the Secretary's actions--is discussed below."

(2)not subject to review by another official of the United States or by a court by mandamus or otherwise.

Id. The Secretary contends that this provision precludes review of not only the merits of the Secretary's determinations, but also of constitutional questions regarding the process used by the Secretary in making those determinations. We disagree.

TABLE OF AUTHORITIES
CASES

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421 US 35, 95 CT 1456 ..... 9,17,22,29,31&32

STATUTES

Constitution Of The United States,
Fourteenth Amendment....9,10,11,12,13,17,
18,19,20,22,23,24,
26,29,30,31,32&33.

AUTHORITIES

Local Court Rule,
19th JDC Rule 8
(2)(e)(1)&(2).....15,16&18

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under Art. 2083 of the Louisiana Code of Civil Procedure, as an interlocutory appeal, without this appeal Plaintiff-Appellant's case would suffer irreparable injury. Jurisdiction, is also invoked by and through the Fourteenth Amendment To the Constitution Of The United States.

ASSIGNMENT OF ALLEGED ERRORS
AND
STATEMENT OF THE ISSUES

ISSUE I

Whether the Administrative Court committed manifest error in the hearing held on March 29, 1993, in not applying the principles of fundamental fairness and the right to a fair and impartial hearing in an Administrative Court, constituting a violation of the Constitutional Rights of the Plaintiff-Appellant guaranteed by the Constitution Of The United States and thereby entered Judgment in favor of the Defendants-Appellees:

ISSUE II

Whether the Administrative Court committed manifest error in the hearing held on March 29, 1993 in it's findings that Louisiana Law did not violate the Due Process Clause of the Constitution of the United States by allowing the Employer\Carrier to terminate Workers' Compensation Benefits of the Plaintiff-Appellant without any prior hearing before the Office of Workers' Compensation Administration, and in placing the entire burden of proof upon the Plaintiff-Appellant to litigate for Workers' Compensation Benefits and thereby entered Judgment in favor of the Defendants-Appellees:

ISSUE III

Whether the Administrative Court committed manifest error in the hearing held on March 29, 1993 by showing favorable treatment to the Defendants-Appellee's Attorney because of his professional standings, constituting a violation of the Constitutional Rights of the Plaintiff-

Appellant guaranteed by the Constitution of the United States and thereby entered Judgment in favor of the Defendants-Appellees:

ISSUE IV

Whether the Administrative Court committed manifest error in the hearing held on March 29, 1993 in it's findings that LSA-R.S. 13:716 was Constitutional, constituting a violation of the Constitutional Rights of the Plaintiff-Appellant guaranteed by the constitution of the united states and thereby entered Judgment in favor of the Defendants-Appellees;

AS FOUND AND SUBMITED IN PETITIONER'S BRIEF

ISSUE II

Whether the Administrative Court committed manifest error in the hearing held on March 29, 1993 in it's findings that Louisiana Law did not violate the Due Process Clause of the Constitution of the United States by allowing the Employer\Carrier to terminate Workers' Compensation Benefits of the Plaintiff-Appellant without any prior hearing before the Office of Workers' Compensation Administration, and in placing the entire burden of proof upon the Plaintiff-Appellant to litigate for Workers' Compensation Benefits and thereby entered Judgment in favor of the Defendants-Appellees.

The Plaintiff-Appellant submits that Workers' Compensation benefits are a property right of the Plaintiff-Appellant that Plaintiff-Appellant became beneficiary of as the consequence of a job related injury and the administrative court fail to recognize this fact, thereby committed manifest error in the hearing held on March 29, 1993 by not recognizing that plaintiff-Appellant's property rights can't be taken without "due process" of law.

and the following in found in the record;

(R.237&238)

PLAINTIFF-APPELLANT: "What I'm saying is, it's fundamentally unfair and a violation of Due process to allow the Insurance Companies to terminate our benefits and then totally put the entire burden on us. Who is the

burden on here, your Honor? It's on me.

THE COURT: The burden in on the claimant.

MR. KNIGHTEN: The claimant, that's right.

THE COURT: And the statute says

MR. KNIGHTEN: That's what I'm saying, your Honor, It's basically unconstitutional. I feel like it's a violation of Due Process and I plan on pursuing the matter.

MR. ATKINSON: If I understand Mr. Knighten's argument then, Judge, his argument is a person like Mr. Knighten can make a claim, say, "I'm, injured, start paying me benefits, Mr. Employer, Mr. Insurer. and it's your burden to prove that I shouldn't get the benefits." and they have to file the claim then string it out for months and months while he's getting benefits he may not be entitled to.

MR. KNIGHTEN: How about the other way, Danny? How about the poor people who are losing their homes and can't buy milk for the baby and all this sort of stuff?

THE COURT: It's my ruling

MR. KNIGHTEN: Sir?

THE COURT: It's my ruling that our procedures are fundamentally fair and

> do meet constitutional challenge. Now, you can that decision to the First Circuit Court of Appeals or the State Supreme Court or The United States Supreme Court. I think that the more time you waste on challenging that, the longer you're going to be without your benefits."

pursuant to the Workers' Compensation Laws the entire burden to enforce Workers' Compensation Benefits is unfairly shifted to the Plaintiff-Appellant constituting a violation of "Due Process" guaranteed by and through the Fourteenth Amendment of the Constitution

The Appellant submits that Workers Compensation benefits are in fact and law, property rights, the same as Doctors and lawyers have their profession, and the car dealers have their dealerships. The "working man" has his workers' compensation benefits if he injured on the job. The Benefits are essential for medical treatment, food, clothing, shelter, and to pay his debts to keep from loosing every thing he owns and without these essential benefits the claimant is subject to undue hardship, property lost, oppression and suffers irreparable injury. Therefore, the risk of unfairness is to high be constitutional tolerable under the "due process" clause to allow a state statute to shift the burden of proof upon the claimant, in support of the Plaintiff-Appellant contentions submits the following authorities:

> **SPEISER VS RANDALL**, 357 US. 513, 2 Led 2d 1460, 78 S.Ct 1332
>
> "The United States Supreme Court will strike down state statutes unfairly shifting the burden of proof in civil

cases."

and

> "In civil cases too this Court has struck down state statues unfairly shifting the burden of proof. **Western & A.R. Co. VS Henderson**, 279 US 639, 73 Led 884, 49 S.Ct 445; cf. **Mobile, J. & K.C.R. Co. VS Turnipseed,** 219 US 35,43, 55 Led 78,80, 31 S.Ct 136"

In application of the above case authorities, all of which are decisions of the United States Supreme Court, to Knighten vs. Todd Electric, Inc., and Commercial Union Insurance Company, constitutes a violation of "Due Process" guaranteed by and through the Fourteenth Amendment of the Constitution by shifting the burden of proof to the Plaintiff-Appellant.

A case very similar to Knighten is the case of Beda Kendall, on behalf of herself and all others similar situated, versus, William E. Brock, Secretary of Department of Labor, filed in United States District Court where a Federal Employees' Compensation Act claimant brought action seeking declaratory and injunctive relief to redress complaint that termination of benefits, without pre-termination notice or opportunity to respond, violated due process, cited as **Kendall, vs. Brock**, 689 F.Supp 354 (1987) the following is found:

> "Even though particular circumstances that gave rise to federal employee's complaint that procedures used by Secretary of Labor to terminate or reduce benefits under Federal Employees' Compensation Act violated due process were no longer in

> controversy, deficiencies complained of would have undoubtedly been repeated against numbers of class federal employee represented; therefore, class action remained alive and was not moot."
>
> and later
>
> "Claim that failure of Secretary of Labor to require notice of termination and reduction of Federal Employees' Act benefits contain listing of applicable statutes and regulations was improper was rendered moot by virtue of fact that Secretary' procedures now provide that notice of proposed termination or reduction include appropriate references to statutes, regulations and decisional law."

the court ordered the Secretary to reinstate Kendall's benefits pending a new determination of her eligibility. The action taken of William E. Brock, Secretary of Department of Labor by voluntarily tailoring the procedure of the Federal Employees' Compensation Act to meet the requirements of "Due Process" of the Fifth Amendment and in fact **Kendall's** cause of action "remained alive". Raises even grater merit to this case.

In application of **KENDALL, VS. BROCK** to Knighten vs. Todd Electric, Inc., and Commercial Union Insurance Company, the "Due Process" requirements of the Fifth Amendment, regarding the termination, modification and notification are applicable to the Secretary of Department of Labor of the United States the same as they are applicable to the Secretary of Labor of the

State of Louisiana, by and through the due process clause of the Fourteenth Amendment and to deprive the plaintiff-Appellant of this constitution right would be a violation of "Due Process" guaranteed by and through the Fourteenth Amendment of the Constitution and\or a violation of "Equal Protection" and "Due Process" guaranteed by the Fifth and Fourteenth Amendment of the Constitution.

Additionally, in support of the Plaintiff-Appellant's contentions, in regards to a hearing before Workers compensations benefits are terminated, submits the case authority of **WISCONSIN VS. CONSTANTINEAU**, 400 US 433, 91 S CT 507, as follows:

> "The right to be heard before being condemned to suffer grievous loss of any kind, even through it may not involve the stigma and hardship of a criminal conviction, is a principle basic to our society."

The Plaintiff-Appellant submits that Workers' Compensation Benefits are in fact and law, a property right by statutory entitlement and the same "due process" requirements governing welfare benefits also govern Workers Compensation Benefits and submits the following case authorities;

> **WITHROW VS. LARKIN**, 421 US 35, 95 CT 1456
>
> "the Due process requirements of a fair trial in a fair tribunal applies to administrative agencies which adjudicate as well as to the courts, and not only is biased decisionmaker constitutionally

unacceptable but even probability of unfairness should be prevented."

GOLDBURG VS. KELLY, 397 US 254, 90 S.CT 1011

"Procedural due process is applicable to the termination of welfare benefits, which benefits are a matter of statutory entitlement for persons qualified to receive them; termination of such benefits involves state action that adjudicates important rights."

additional, the Plaintiff-Appellant submits the following case authority in respect to a 10 day suspension of students without a prior hearing, as follows:

GROSS VS. LOPEZ, 419 U.S. 565, 95 S.CT 729

"A ten-day suspension of students from school could not be consider de minimis and therefore imposed without a hearing in complete disregard of due process; neither property interest in educational benefits temporarily denied nor liberty interest in reputation was so insubstantial that suspensions might be constitutionally imposed by any procedure school chose no matter how arbitrary."

and:

"Young people, who under the Ohio statutes, are required to attend school, do not shed their

> constitutional rights at the school house door."

the Plaintiff-Appellant submits, that he did not leave his constitutional rights at home, when he became subject to the Workers' Compensation Laws of the state of Louisiana. Consequently, for one or any combination, of the aforementioned reasons and authorities, Louisiana law violate the "Due Process" guaranteed by and through the Fourteenth Amendment of the Constitution in allowing the Employer\Carrier to terminate Workers' Compensation Benefits of the Plaintiff-Appellant without any prior hearing before the Office of Workers' Compensation Administration, constitutes a violation of "Due Process" guaranteed by the Fourteenth Amendment of the Constitution and by placing the entire burden of proof on the Plaintiff-Appellant to litigate for Workers' Compensation Benefits, constitutes a violation of "Due Process" guaranteed by the Fourteenth Amendment of the Constitution, thereby the administrative court committed manifest error in denying Plaintiff-Appellant's Motion To Reinstate Worker's Compensation Benefits And For Any And All Back Payments Of Benefits And\Or Similar Motion (R.178-182), thereby in entering Judgment in favor of the Defendants-Appellees.

For one, or any combination, of the aforementioned reasons or authorities the Plaintiff-Appellant submits that "Due Process" guaranteed by and through the Fourteenth Amendment of the Constitution was violated by the Administrative Court, constituting manifest error in it's findings that Louisiana law did not violate the due process clause of the Constitution of the United States by allowing the Employer\Carrier to terminate Workers' Compensation Benefits of the Plaintiff-Appellant

without any prior hearing before the Office of Workers' Compensation Administration, and in placing the entire burden of proof on the Plaintiff-Appellant to litigate for Workers' Compensation Benefits, thereby entered Judgment in favor of the Defendants-Appellees.